



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

EAST KINGSTON TEACHERS ASSOCIATION/
NEA-NEW HAMPSHIRE

Complainant

v.

EAST KINGSTON SCHOOL BOARD

Respondent

CASE NO. T-0379:1

DECISION NO. 93-44

APPEARANCES

Representing East Kingston Teachers Association/NEA-NH:

Steven Sacks, Esq., Counsel

Representing East Kingston School Board:

Michael B. King, Esq., Counsel

BACKGROUND

The parties to this proceeding litigated an unfair labor practice (ULP) on the issue of an alleged unilateral change in health care benefits. That case was heard by the PELRB on July 23, 1992. Decision No. 92-159 was issued on October 21, 1992 which made a finding of a ULP against the Board and directed it to "return to the status quo by maintaining health insurance benefits under the 1989-92 scheme for the 1992-93 school year unless modified by negotiations." The last sentence of the text read, "This order directing the maintenance of the status quo is not intended to extend beyond the conclusion of the 1992-93 school year on August 31, 1993." While the findings, rationale and order of Decision No. 92-159 are incorporated herein by reference, it should be noted that the Board applied for and was granted re-hearing on the limited issue of its request for further consideration of its Motion to Dismiss (Decision No. 92-193, December 17, 1992). Meanwhile, the Association filed a Motion to Clarify on November 10, 1992 seeking further clarification or amplification of the last sentence of the text, as quoted earlier in this paragraph. By

filing of April 5, 1993, the Board represented to the PELRB that a new collective bargaining agreement (CBA) had been ratified by the East Kingston School District and moved to withdraw its Request for Rehearing. By filing also of April 5, 1993, the Association noted that it did not oppose the Board's Motion to Withdraw Request for Rehearing but did express a desire to be heard by the PELRB on its Motion to Clarify. The parties appeared before the PELRB on April 6, 1993 to argue their respective motions.

FINDINGS OF FACT

1. The "Findings of Fact" and conclusions set forth in Decision No. 92-159 dated October 21, 1992, are hereby incorporated by reference.
2. Particular attention is devoted to Finding No. 5 in Decision No. 92-159, namely, that the 1989-92 CBA had a provision at Article XXI thereof which provided that it "shall remain in full force and effect until August 31, 1992 or until a successor Agreement is ratified by the parties."
3. At the time Decision No. 92-159 was issued on October 21, 1992, the parties had not concluded negotiations for a successor CBA and the terms of that agreement had yet to be ratified by either the voters of the School District or the membership of the Association.
4. Based on representations made to the PELRB, the Board, after receiving Decision No. 92-159 and until the commencement of the 1993-94 school year set to start on September 1, 1993, agreed to compensate unit members for any out-of-pocket net costs incurred as the result of the Board's unilateral change in health insurance benefits through the adoption of A\$\$et Comp 100 on September 1, 1992. Health care benefits on and after September 1, 1993 are covered by a new CBA between the parties for the 1993-94 school year.

DECISION AND ORDER

The inclusion of the last sentence of the test of the PELRB's decision in Decision No. 92-159 was inappropriate because, at the time it was issued, there was no assurance or even an indication that the parties would conclude their negotiations prior to Sept. 1, 1993. If they had not, then the status quo would not have been maintained into the 1993-94 school year. Such a result could not have been within the contemplation of the PELRB and would be grossly inconsistent with its policy of maintaining the status quo

during the pendency of negotiations. This conclusion is further supported by the parties' 1989-92 CBA, particularly at Article XXI referenced in Finding No. 2, above. The parties contracted the duration of that agreement, namely, "...or until a successor Agreement is ratified by the parties." It would be contrary not only to the PELRB's policy but also to public policy for us to intervene in that agreement or understanding, particularly if such intervention were to work to the benefit of one party or to the detriment of another.

Thus, we conclude that the inclusion of the last sentence of the text of Decision No. 92-159 was erroneous and inappropriate. It stands for no precedential value, is not to be cited for the proposition that the PELRB has initiated any changes in its policy relative to the maintenance of the status quo during negotiations and is to be expunged from the last sentence of Decision No. 92-159 through the issuance of this decision. On another matter, the Board's Motion to Withdraw Request for Rehearing is GRANTED.

So ordered.

Signed this 29th day of April, 1993.



JACK BUCKLEY
Alternate Chairman

By unanimous vote. Chairman Jack Buckley presiding. Members Seymour Osman and E. Vincent Hall present and voting.